

COTTONWOOD HEIGHTS

RESOLUTION NO. 2009-30

A RESOLUTION APPROVING AN AGREEMENT FOR ENGINEERING SERVICES WITH GILSON ENGINEERING (2009-10 FISCAL YEAR)

WHEREAS, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met in regular session on 9 June 2009 to consider, among other things, approving an "Agreement for Engineering Services" (the "*Agreement*") with Gilson Engineering (*Gilson*) whereunder Gilson would provide engineering services to the City as specified in the Agreement during the City's 2009-10 fiscal year; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the Cottonwood Heights city council that the attached Agreement is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

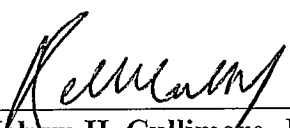
This Resolution, assigned no. 2009-30, shall take effect immediately upon passage.

PASSED AND APPROVED effective 9 June 2009.

COTTONWOOD HEIGHTS CITY COUNCIL




Linda W. Dunlavy, Recorder

By 
Kervyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Gordon M. Thomas	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Don J. Antczak	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Bruce T. Jones	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 9th day of June 2009.

RECORDED this ___ day of June 2009.

WST\CH\524190.1

Agreement for Engineering Services

THIS AGREEMENT FOR ENGINEERING SERVICES (this "*Agreement*") is made effective 1 July 2009 by **GILSON ENGINEERING**, an Utah corporation ("*Engineer*"), and **COTTONWOOD HEIGHTS**, a Utah municipality ("*City*").

R E C I T A L S:

A. Engineer is licensed to perform, and is in the business of providing, engineering, site inspection, technical and other engineering services (collectively, "*Engineering Services*").

B. City is in need of Engineering Services in connection with building and other real property development and public works now or hereafter proposed or occurring within City's corporate limits (the "*City Limits*").

C. Engineer represents to City that Engineer has significant expertise in the area of Engineering Services, and that Engineer desires to provide such services to City as described in this Agreement.

D. Consequently, the parties have determined that it is mutually advantageous to enter into this Agreement.

A G R E E M E N T:

NOW THEREFORE, in consideration of the premises, the mutual covenants and undertakings of the parties described herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Scope of Services to be Provided.** Throughout the term of this Agreement, Engineer shall furnish to City all Engineering Services reasonably needed and/or requested by City. Engineer shall use its diligent efforts to cause the Engineering Services to be performed by its personnel with the lowest possible billing rates consistent with the ability levels reasonably required to assure that such services are accomplished in a professionally competent and timely manner.

2. **Description of Engineering Services.** Engineer shall provide all personnel, equipment and supplies necessary to supply (in a modern, well-equipped fashion) the following Engineering Services within City Limits in compliance with all applicable laws and standards:

(a) *Development Review.* Review preliminary and final residential and commercial plats (including reviewing subdivision plats for conformity with proper surveying standards, recording requirements and other applicable City requirements), plans (including structural calculations) and site grading requirements for compliance with City ordinances and other applicable standards; identify flood control issues; compute impact fees; and conduct or participate in preconstruction meetings and preliminary plan reviews to identify and resolve potential engineering or building issues associated with particular projects.

(b) Bond Calculation and Inspection. Review proposed development projects to calculate the proper amount for performance/improvement bonds and/or inspect bonded development projects to verify improvement installation and compliance with City's requirements. City shall be responsible for bond documentation, approval, release, enforcement and forfeiture.

(c) Site Inspection. Inspect all residential and commercial (on and off site) development within City Limits for compliance with the approved construction plans and compliance with City standards and all applicable laws and ordinances. Inspect grading, improvements and road cuts. Advise City concerning the release of bonds.

(d) Geology. Respond to public inquiries regarding geological hazards within City Limits; provide engineering geology review and written recommendations on all applicable applications to address fault and natural hazard issues; and act as a resource to City regarding natural hazards. Engineer may perform its duties under this subsection by itself or through a qualified, expert subcontractor reasonably acceptable to City.

(e) Administrative Services. Provide various administrative services including correspondence and record keeping for excavation permits, bonding, bond administration, site inspection dispatch, issue road cut permits, and other miscellaneous City activities as assigned by City.

(f) Transportation. As directed by City, develop transportation standards; perform transportation planning; and review transportation impact studies within City Limits.

(g) Roadway Planning and Design. As directed by City, develop roadway design standards; prepare roadway project design plans and specifications; manage consultant design contracts; and/or assist City to establish criteria for granting permits to cut pavement and/or excavate within the public rights-of-way within City, including advice on establishing an appropriate fee schedule for such cuts/excavations.

(h) Drainage Planning and Design. As directed by City, develop drainage design standards; develop or update a storm drain master plan; prepare drainage project design plans and specifications; and/or manage consultant design contracts.

(i) Storm Water Quality Management. As directed by City, develop a storm water management plan to meet the requirements of UPDES permit and assist in implementing six required plan elements including public education.

(j) Emergencies. Cooperate with City's efforts to issue on an expedited basis emergency permits occasioned by disasters such as earthquakes and fires.

(k) Barricade. Provide direct communication by inspectors with the Unified Fire Authority, City's law enforcement services provider, and local barricade companies to mitigate emergency roadway hazard situations.

(l) Material Testing. Material testing, including field and lab work, at competitive rates.

(m) Surveying. Land surveying, including, without limitation, verification of (i) subdivision field boundary and monument location, and (ii) field grades for offsite improvements such as curb, gutter, sidewalk and roadways.

(n) Addressing. Provide site addressing of proposed developments in accordance with the adopted County-wide grid system to ensure compliance with the 911 emergency code requirements.

(o) Reporting. Establish and deliver periodically to City copies of acceptable computer files or other file copies in a form acceptable to City with sufficient information for City to monitor Engineer's performance of the Engineering Services hereunder.

(p) Advice and Consultation. Act as a resource to City and its councils, boards and committees (such as City's city council, planning commission and board of adjustment) with respect to the Engineering Services to be provided under this Agreement.

(q) Public Meetings. Attend City's city council meetings, cabinet meetings and development and planning meetings on a periodic basis or as requested by City. All fees and charges otherwise applicable to the first two hours' attendance at each such meeting shall be waived, and time thereafter shall be billed at standard rates.

(r) Big Cottonwood Trail. Assist City, as specifically requested from time to time, concerning survey, engineering and other issues affected City's planned Big Cottonwood Trail.

(s) Other Services. Perform such other services as may be mutually agreed to from time to time by the parties.

The parties acknowledge that City has developed its own graphic information system ("GIS"). When performing Engineering Services hereunder for City, Engineer first shall use all reasonable efforts to obtain any needed information from City's GIS, using City personnel. If any needed information is not available through City's GIS, then Engineer may obtain such information from Engineer's own GIS, at City's expense, upon City's prior written approval. City will not pay for any charges relating to use of Engineer's own GIS unless such use has been pre-authorized in writing by City.

3. **Personnel, Equipment and Facilities.** Except as otherwise specified in this Agreement, Engineer shall at its sole cost furnish all supervision, personnel, labor, equipment, materials, supplies, communication facilities, vehicles for transportation and identification cards, and shall obtain all licenses and permits, necessary or incident to performing any and all of the Engineering Services.

4. **Term.** This Agreement is binding and enforceable on the date first above written. Engineer's obligation to perform any Engineering Services hereunder which are not provided by Salt Lake County (City's current Engineering Services contract provider) shall commence on the effective date of this Agreement and, unless renewed or sooner terminated as provided for herein, shall terminate at 11:59:59 p.m. on 30 June 2010.

5. **Termination.** Notwithstanding anything in this Agreement to the contrary, either party may terminate this Agreement at any time by giving 90 days' prior written notice to the other party.

6. **Payment for Services.** City shall compensate Engineer hereunder as follows:

(a) **Engineering Services.** For satisfactory performance of the Engineering Services under this Agreement, City shall pay Engineer's rates and charges specified on the attached exhibit.

(b) **Work Order.** For services outside the scope of this Agreement, all such services shall be performed pursuant to an itemized work order or work release ("*Work Order*") in such form as City may specify from time to time.

(c) **Invoices.** Invoices shall be submitted to City for amounts claimed due by Engineer. Engineer will endeavor to submit such invoices within 30 days after the performance of the underlying services. All such invoices shall be in a form reasonably acceptable to City and shall (1) contain references to the date of this Agreement and the specific work order issued for such Engineering Services; (2) itemize and describe in detail the Engineering Services performed and the hours expended in such performance; and (3) contain copies and supporting documents and proof of any expenditures on behalf of City.

(d) **Remittance.** Within 30 days after its receipt of Engineer's invoice for Engineering Services in acceptable form, City shall remit the amount due hereunder to:

GILSON ENGINEERING
12401 South 450 East, Suite C2
Draper, UT 84020

or to such other address as Engineer may designate to City in writing from time to time.

If payment is not remitted to Engineer when due, Engineer shall be entitled to recover interest thereon at the rate of ten percent (10%) per annum from and after the date the remittance is due and payable.

(e) Non-Funding. The parties acknowledge that funds are not presently available for performance of this Agreement by City beyond 30 June 2010. City's obligation for performance of this Agreement beyond that date (or beyond the end of any of City's future fiscal years within the term of this Agreement) is contingent upon funds being appropriated for payments due under this Agreement. In the event that no funds or insufficient funds are appropriated and budgeted in a current or any succeeding fiscal year, or in the event there is a reduction in appropriations of City, due to insufficient revenue, resulting in insufficient funds for payments due or about to become due under this Agreement, then this Agreement shall create no obligation on City as to such fiscal year (or any succeeding fiscal year), but instead shall terminate and become null and void on the first day of the fiscal year for which funds were not budgeted and appropriated, or, in the event of a reduction in appropriations, on the last day before the reduction becomes effective (except as to those portions of payments herein then agreed upon for which funds are appropriated and budgeted). Said termination shall not be construed as a breach of or default under this Agreement and said termination shall be without penalty, additional payments, or other charges to City of any kind whatsoever, and no right of action for damages or other relief shall accrue to the benefit of Engineer or its successors or assigns as to this Agreement, or any portion thereof, which may so terminate and become null and void.

7. Performance Standards for Certain Engineering Services. Engineer shall perform all of the Engineering Services in a timely, responsive manner. In addition, the following performance standards shall be applicable to certain of the Engineering Services:

(a) Inspections. No less than ninety-five percent (95%) of all inspections shall be completed no later than the end of the next business day after receipt of a request for such inspection by City;

(b) Preliminary Plat Review. No less than ninety-five percent (95%) of all preliminary plat reviews shall be completed and submitted to City within five working days after the preliminary plat is submitted to City;

(c) Final Plat Review. No less than ninety-five percent (95%) of all final plat reviews shall be completed and submitted to City within five working days after the final plat is submitted to City;

(d) Site Plan Review. No less than ninety-five percent (95%) of all site plan reviews for permitted and conditional uses shall be completed and submitted to City within five working days after the site plan is submitted to City.

(e) Approval Standard. All plat and site plan approvals must be signed off by a professional engineer;

8. **Services Performed in a Professional Manner; Certification.** All Engineering Services shall be provided by Engineer in a professional, ethical, reasonable manner in compliance with any and all applicable laws and standards of performance. All personnel providing Engineering Services hereunder shall be licensed by all applicable authorities and shall have substantially the same certifications, meet the same professional/technical requirements, and, on average, have the same level of experience, as other personnel regularly performing such functions for Salt Lake County's Engineering Services Division. Engineer shall conduct regular quality control inspection reviews of all of its personnel and their work to assure professional/technical proficiency and to determine training needs. Subject to the foregoing, the exact nature of how the Engineering Services are to be provided, the discipline of personnel, and other matters incidental to providing such services shall remain with Engineer.

9. **City Engineer; Data Device.** City may designate a representative of Engineer's staff to be the chief engineering official for City and represent City as its "city engineer." To facilitate more complete e-mail communication between City and its city engineer, City may provide to Engineer a Motorola "Q-Phone," Blackberry or similar data device on the same terms and conditions as to City's other key appointed officers, subject to Engineer's obligation to reimburse City for any personal usage of such device in accordance with any reimbursement policy adopted from time to time by City.

10. **Change in Level of Services.** City shall be entitled to reasonably modify (increase or decrease) the level of Engineering Services by providing at least 30 days' prior written notice to Engineer of such change. Engineer shall provide such modified Development Service pursuant to the fee schedule.

11. **Suspension of Services.** City may, by written notice, direct Engineer to suspend performance of any or all of the Engineering Services for any specified period of time. If such suspension is not occasioned by the fault or negligence of Engineer, the notice shall be modified to compensate Engineer for extra costs incurred due to said suspension, provided that any claim for adjustment is supported by appropriate cost documentation and asserted within 20 calendar days after the date that City issues an order for resumption of the Engineering Services. Upon receipt of any such notice of suspension, Engineer shall (a) discontinue the subject Engineering Services; (b) place no further orders or subcontracts for such services; (c) suspend all pending orders and subcontracts for such services; (d) protect and maintain the work in question; and (e) otherwise mitigate City's costs and liabilities for those Engineering Services suspended.

12. **Termination for Convenience.** City may terminate any Work Order (or part thereof) at any time prior to completion, with or without cause, by written notice to Engineer. Upon any such termination, City shall pay Engineer for all Engineering Services satisfactorily performed

by Engineer pursuant to such Work Order as of the date of termination, excluding damages or anticipated profits on work not yet performed.

13. **Ownership of Designs and Drawings.** All documents (whether printed or stored as electronic, magnetic, or digital information) including, but not limited to, documents prepared by Engineer with respect to building inspection type services, original drawings, estimates, specifications, field notes, and data, generated or used in connection with Engineer's performance of the Engineering Services hereunder are and shall remain City's property; provided, however, that Engineer shall have no liability or responsibility for any such documents which are re-used by City without Engineer's consent for any project(s) other than the project(s) for which such documents originally were prepared by Engineer. Upon completion or earlier termination of the Engineering Services and City's payment of the amounts due Engineer for such services, Engineer shall deliver to City all documents (whether complete or partially complete) produced or collected by Engineer in its performance of such Engineering Services. Although Engineer may, at its expense, reproduce for its own files such drawings, estimates, specifications, field notes or data, Engineer may not disclose, sell, publish or display any such item without City's prior written consent. City hereby consents that Engineer may, at its expense, reproduce and use standardized forms developed by it pursuant to this Agreement.

14. **Nondisclosure.** Unless otherwise required by law, Engineer will not divulge to third parties without City's prior written consent any information obtained from or through City in connection with this Agreement. Engineer shall safeguard the confidentiality of any information obtained from or through City in connection with this Agreement to the same extent that Engineer safeguards the confidentiality of its own proprietary or confidential information. Unless waived by City, Engineer shall require its employees and subcontractors of every tier to adhere to the foregoing covenants of nondisclosure and confidentiality. The nondisclosure restrictions in this section shall not apply, however, to any information that constitutes public records, or to any information that enters the public domain other than by reason of its disclosure by Engineer or its employees or subcontractors.

15. **Laws and Regulations.** Engineer shall at all times comply with all applicable laws, statutes, rules, regulations, and ordinances, including without limitation, those governing wages, hours, desegregation, employment discrimination, workers' compensation, employer's liability and safety. Engineer shall comply with equal opportunity laws and regulations to the extent that they are applicable.

16. **Intellectual Property.** Except as otherwise provided herein, if Engineer's employees, officers, agents, subcontractors of any tier, or anyone of a like nature in the performance of the Engineering Services, or as a result of performing the Engineering Services, develop any trade secret, prepare any copyrighted material, make any improvement, originate any invention, or develop any process or the like, such trade secret, copyright, improvement, invention, or process shall be the property of Engineer. Notwithstanding the foregoing, however, Engineer shall grant or cause to be used for the benefit of City, without cost, any such trade secret, copyright, improvement, design, invention, or process in any manner for so long as City desires to use the same for City's own internal use.

17. **Independent Contractor Status.** Engineer shall perform the Engineering Services as an independent contractor, and all persons employed by Engineer in connection herewith shall be employees of Engineer and not employees of City in any respect.

(a) **Control.** Engineer shall have complete control and discretion over all personnel providing Engineering Services hereunder.

(b) **Salary and Wages.** City shall not have any obligation or liability for the payment of any salaries, wages or other compensation to personnel providing Engineering Services hereunder.

(c) **No Employment Benefits.** All personnel providing Engineering Services are and shall be and remain Engineer's employees, and shall have no right to any City pension, civil service, or any other City benefits pursuant to this Agreement or otherwise.

18. **Assignment; Subcontracts.** Engineer shall not assign or subcontract this Agreement, or any part thereof, without City's prior written consent, and any attempted assignment or subcontract in violation of this section shall be void from its inception. Engineer shall be fully responsible for the acts or omissions of any subcontractor of any tier and of all persons employed by them, and neither City's consent, nor anything contained herein, shall be deemed to create any contractual relations between City and any assignee or subcontractor of any tier.

19. **Accounting and Auditing.** Engineer shall keep accurate and complete records in support of all remuneration paid hereunder. City, or its audit representative, shall have the right at any reasonable time to examine, audit, and reproduce all records pertaining to costs, including but not limited to payrolls, employees' time sheets, invoices, and all other evidence of expenditures for Engineering Services. Such records shall be available for at least two years after completion of the underlying Engineering Services.

20. **Non-Exclusive Rights.** Nothing in the Agreement is to be construed as granting to Engineer any exclusive right to perform any or all Engineering Services (or similar services) required by City.

21. **Indemnification.** Engineer shall defend, indemnify, save and hold harmless City (including, without limitation, its elected and appointed officers, employees, successors and assigns) from and against any and all demands, liabilities, claims, damages, actions and/or proceedings, in law or equity (including reasonable attorneys' fees and cost of suit), alleged to relate to or arising in any way from the Engineering Services provided, or to be provided, hereunder. Engineer shall so defend, indemnify, save and hold harmless City whether such demands, liabilities, claims, damages, actions and/or proceedings result from or to the extent caused by (or are alleged to have resulted from) the simple negligence, gross negligence, recklessness or intentional misconduct of Engineer (or any officers, employees, agents, subcontractors, etc. of Engineer), or under any other applicable legal theory, and shall be effective whether or not such negligence, recklessness or other misconduct reasonably was foreseeable. In the event of a lawsuit brought against Engineer and/or City as a result of Engineering Services (or lack thereof), and if requested

by City, Engineer shall provide at its sole cost separate qualified legal representation to City (including its elected and appointed offices, employees, successors and assigns) that is reasonably acceptable to and specified by City. Nothing herein shall, however, require Engineer to indemnify as provided in this section with respect to (a) City's own negligence or intentional misconduct, or (b) any demand, liability, claim, damage, action and/or proceeding not alleged to relate to the Engineering Services provided, or to be provided, by Engineer hereunder.

22. **Insurance.** Without limiting any indemnity or other obligations of Engineer hereunder, Engineer shall, prior to commencing work hereunder, secure and continuously thereafter (throughout the term of this Agreement) carry with insurers the following insurance coverage in policies which include provisions or endorsements naming City as an additional insured, and shall furnish proof thereof satisfactory to City promptly when requested:

(a) Commercial general liability insurance coverage with a minimum single limit of \$2,000,000.00. The coverage shall include bodily injury and property damage liability coverage, contractual liability coverage, products and completed operations coverage, as well as coverage to protect against and from all loss by reason of injury to persons or damage to property, including Engineer's own workers and all third persons, property of City and all third parties based upon and arising out of the negligent performance of Engineer's operations hereunder, including the operations of its subcontractors of any tier.

(b) Business automobile liability insurance coverage with a minimum single limit of \$2,000,000.00 for bodily injury and property damage with respect to Engineer's vehicles whether owned, hired or non-owned, assigned to or used in the performance of the Engineering Services.

(c) Workers' compensation insurance coverage as required by applicable workers' compensation and employer's liability statutes.

(d) Professional negligence/errors and omissions insurance covering all errors, omissions and other professional negligence on the part of Engineer and its officers, employees, agents, etc. in connection with the Engineering Services to be performed hereunder in a minimum coverage amount of \$2,000,000.00 per occurrence.

The foregoing insurance policies shall be through reputable, licensed insurers reasonably acceptable to City, and specifically shall provide that such insurance may not be terminated or reduced without at least thirty (30) days' prior written notice to City.

23. **Examination of Work.** All Engineering Services shall be subject to examination by City at any reasonable time(s), and City shall have the right to reasonably reject unsatisfactory work. City may give Engineer a reasonable opportunity to correct unsatisfactory work before pursuing other remedies. Neither City's examination of Engineering Services, failure to examine Engineering Services, City's acceptance of Engineering Services, nor payment therefor shall relieve Engineer from any of its obligations under this Agreement.

24. **Progress.** Engineer shall submit periodic progress reports under Work Orders as reasonably requested by City. City's representatives may visit Engineer's office at any reasonable time to determine the status of ongoing Engineering Services under this Agreement.

25. **Conflict Resolution.** Except as otherwise provided for herein, any dispute between the parties regarding Engineering Services which is not disposed of by agreement shall be decided by City, which shall provide written notice of the decision to Engineer. Such decision by City shall be final unless Engineer, within 30 calendar days after such notice of City's decision, provides to City a written notice of protest, stating clearly and in detail the basis thereof. Engineer shall continue its performance of this Agreement during such resolution. If the parties do not thereafter agree to a mutually-acceptable resolution, then they shall resolve the dispute pursuant to section 26 below.

26. **Claims and Disputes.** Unresolved claims, disputes and other issues between the parties arising out of or related to this Agreement shall be decided by litigation in the Third Judicial District Court of Salt Lake County, Utah. Unless otherwise terminated pursuant to the provisions hereof or otherwise agreed in writing, Engineer shall continue to perform the Engineering Services during any such litigation proceedings and City shall continue to make undisputed payments to Engineer in accordance with the terms of this Agreement.

27. **Notice.** Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within three days after such notice is deposited in the United States Mail, postage prepaid, certified, return receipt requested and addressed to the parties as set forth below:

Engineer:	GILSON ENGINEERING 12401 South 450 East, Suite C2 Draper, UT 84020
City:	COTTONWOOD HEIGHTS Attn. Liane Stillman, City Manager 1265 East Fort Union Blvd., Suite 250 Cottonwood Heights, UT 84047
with a copy to:	Wm. Shane Topham CALLISTER NEBEKER & MCCULLOUGH 10 East South Temple, 9 th Floor Salt Lake City, UT 84133

28. **Additional Provisions.** The following provisions also are integral to this Agreement:

(a) **Titles and Captions.** All section or subsection titles or captions herein are for convenience only. Such titles and captions shall not be deemed part of this Agreement and shall in

no way define, limit, augment, extend or describe the scope, content or intent of any part or parts hereof.

(b) Pronouns and Plurals. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plurals and vice versa.

(c) Applicable Law. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the state of Utah.

(d) Integration. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto.

(e) Time. Time is the essence hereof.

(f) Survival. All agreements, covenants, representations and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.

(g) Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any party may, by notice delivered in the manner provided in this Agreement, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party. No waiver shall affect or alter the remainder of this Agreement but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

(h) Rights and Remedies. The rights and remedies of the parties hereto shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions hereof.

(i) Severability. In the event that any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

(j) Litigation. If any action, suit or proceeding is brought by a party hereto with respect to a matter or matters covered by this Agreement, all costs and expenses of the prevailing party incident to such proceeding, including reasonable attorneys' fees, shall be paid by the nonprevailing party.

(k) Exhibits. All exhibits annexed to this Agreement are expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement, either in this Agreement itself or in any of such writings, shall be deemed to refer to and include this Agreement and all such exhibits and writings.

(l) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

(m) Authorizations. Engineer hereby represents that it has been duly authorized to enter into this Agreement by a resolution of its Board of Directors. City hereby represents that it has been duly authorized to enter into this Agreement by a resolution duly adopted by its City Council.

DATED effective the date first-above written.

ATTEST:

COTTONWOOD HEIGHTS

LINDA W. DUNLAVY, Recorder
Date signed _____

By: _____
KELVYN H. CULLIMORE, JR., Mayor
Date signed _____

ATTEST:

GILSON ENGINEERING,
a Utah corporation

By: _____
Its: _____
Date signed _____

By: _____
Its: _____
Date signed _____

WST\CH\524189.1

Exhibit to Agreement for Engineering Services

(Attach Fee Schedule)